

CIA - INTELLIGENCE AUTHORIZATION ACT DRAFT

1. Covers ALL CLASSIFIED INFORMATION

- a. Attorney General and Department or Agency head must certify to court pre-indictment that at time of disclosure information was properly classified
- b. Certification conclusive unless dependent shows (1) information was available from public sources, or (2) information clearly did not meet criteria for classification
- c. If dependant challenges classification as in (b), government must establish for the court what damage to the national security could have been expected from the disclosure. Court can determine the information was properly classified in camera, ex parte, as a matter of law

2. Covers intentional DISCLOSURES BY OFFICERS AND EMPLOYEES AND PERSONS WITH AUTHORIZED ACCESS

3. Covers DISCLOSURES TO PERSONS WHO ARE NOT OFFICERS OR EMPLOYEES AND WHO ARE NOT AUTHORIZED TO HAVE ACCESS TO CLASSIFIED INFORMATION

4. Does not cover disclosures to the federal judiciary or committee or subcommittees of Congress

5. DEFENSES

- a. Information has been OFFICIALLY DISCLOSED
- b. Defendant OBTAINED INFORMATION INDEPENDENTLY (NOT AS A RESULT OF AUTHORIZED ACCESS)
- c. Defendant OBTAINED PREPUBLICATION CLEARANCE OR COURT ORDER OVERRULING CLASSIFICATION

# The Intelligence Authorization Act

## TITLE VI - MODIFICATION OF CERTAIN NATURALIZATION REQUIREMENTS

### Immigration and Nationality Act Amendment

SEC. 601. Section 316 of the Immigration and Nationality Act (8 U.S.C. 1427) is amended by adding at the end thereof the following new subsection:

"(g)(1) Whenever the Director of Central Intelligence, the Attorney General and the Commissioner of Immigration determine that a petitioner otherwise eligible for naturalization has made a significant contribution to the national security or to the national intelligence mission, the petitioner may be naturalized without regard to the residence and physical presence requirements of this section, or to the prohibitions of Section 313 of this Act, and no residence within the jurisdiction of the court shall be required.

(2) A petition under this provision may be filed, without regard to the residence of the petitioner, in any district court of the United States. The court shall conduct proceedings under this subsection in a manner consistent with the protection of intelligence sources, methods and activities."

## TITLE VII - UNAUTHORIZED DISCLOSURES OF CLASSIFIED INFORMATION

### Unauthorized Disclosure Amendment

SEC. 701. The National Security Act of 1947 (50 U.S.C. 401 et seq.) is amended by adding at the end thereof the following new subchapter:

#### "SUBCHAPTER VII

#### Unauthorized Disclosure of Classified Information

#### § 701. Unauthorized Disclosure of Classified Information

- (a) Whoever, being or having been an officer or employee of the United States or a person having or having had authorized access to classified information, willfully discloses, or attempts to disclose, any classified information to a person

who is not an officer or employee of the United States and who does not have authorized access to classified information, shall be fined not more than \$25,000, or imprisoned not more than five years, or both.

(b) Whoever, being or having been an officer or employee of the United States or a person having had authorized access to classified information, willfully aids or abets the violation of subsection (a), shall be fined not more than \$25,000, or imprisoned not more than five years, or both.

(c) As used in this section --

(i) the term "classified information" means any information or material that has been determined by the United States Government pursuant to an Executive order, statute or regulation, to require protection against unauthorized disclosure for reasons of national security;

(ii) the term "disclose" or "discloses" means to communicate, furnish, deliver, transfer, impart, provide, publish, convey, or otherwise make available;

(iii) the term "authorized access" means having authority, right, or permission to receive classified information or material within the scope of authorized government activities or pursuant to the provisions of a statute, Executive order, directive of the head of any department or agency who is empowered to classify information, order of any United States court, or provisions of any Rule of the House of Representatives or resolution of the Senate which governs the handling of classified information by the respective House of Congress.

(d) Nothing in this section shall be construed to establish criminal liability for disclosure of classified information in accordance with applicable law to:

(i) any court of the United States, or judge or justice thereof; or

- (ii) the Senate or House of Representatives, or any committee, subcommittee or joint committee thereof.
- (e) It is an affirmative defense to a prosecution under this section that:
  - (i) before the defendant's disclosure, the information that provides the basis for prosecution under this section officially had been disclosed publicly; or
  - (ii) the defendant did not obtain the classified information that provides the basis for prosecution under this section as a result of his duties as an officer or employee of the United States, or as a result of authorized access to classified information; or
  - (iii) the defendant has submitted the information that provides the basis for prosecution under this section to a department or agency of the United States for prepublication review, whether under a contract which provides for such review or otherwise, or for declassification review pursuant to the provision of an Executive order, and (a) the United States informed defendant that it did not object to disclosure, or (b) the United States objected to such disclosure, or denied declassification, and such objection or denial was overruled in a final opinion or ruling of a court of the United States.
- (f) Prosecution under this section shall be barred unless, prior to the return of an indictment or the filing of any information, the Attorney General and the head of the department or agency responsible for the classified information jointly certify in writing that, at the time of the disclosure, the information constituted properly classified information. Such certification shall be conclusive as to the propriety of the classification except that, if a defendant demonstrated that the information that provides the basis for prosecution under this section was available from public sources

or makes a prima facie showing that the information did not meet the substantive criteria for classification under applicable law, the prosecution may proceed if the United States establishes that the information, at the time of the disclosure, was properly classified because the particular disclosure reasonably could be expected to damage the national security. The court, based upon submissions of defendant and the United States, shall determine whether the information was properly classified. Upon request of the United States, the court's determination of the issue shall be in camera, ex parte. Any determination by the court on the propriety of the classification shall be de novo and a matter of law, and shall be conclusive except as provided in subsection (g) below.

- (g) An interlocutory appeal by the United States shall lie to a court of appeals from a decision or order of the court with respect to the propriety of the classification of the information that provides the basis for prosecution under this section.
- (h) There is jurisdiction under this section over an offense committed outside the United States."

SEC. 702. The table of contents of Chapter 15 of Title 50, United States Code, is amended to include the following caption:

"427. Unauthorized Disclosure of Classified Information".

## TITLE VIII - PERSONAL LIABILITY AMENDMENT TO THE NATIONAL SECURITY ACT OF 1947

### Personal Liability Amendment

SEC. 801. The National Security Act of 1947 (50 U.S.C. 401 et seq.) is amended by adding at the end of subchapter VII the following new subchapter:

STATE DRAFT

1. Covers CLASSIFIED INFORMATION IN SPECIAL ACCESS PROGRAMS

-- Department and agency heads can create special access programs if authorized by statute or executive order

2. Covers INTENTIONAL DISCLOSURES BY PERSONS WITH AUTHORIZED ACCESS AND KNOWLEDGE INFORMATION IS WITHIN SPECIAL ACCESS PROGRAM

3. Covers SUCH DISCLOSURES TO PERSONS WHO DO NOT HAVE AUTHORIZED ACCESS TO SUCH SPECIAL ACCESS PROGRAM INFORMATION

A BILL

To protect certain categories of classified information from unauthorized disclosure, and for other purposes.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

The National Security Act of 1947 (50 U.S.C. 401 et seq.) is amended by adding at the end thereof the following new title:

**"TITLE VIII--UNAUTHORIZED DISCLOSURE OF CERTAIN CLASSIFIED INFORMATION**

Sec. 801. (a) Whoever, having or having had authorized access to classified information included within a special access program, willfully discloses or attempts to disclose any such information, knowing or having reason to know it to be included within a special access program, to any person who does not have authorized access to such information, shall be fined not more than \$25,000, and imprisoned for up to the period of his or her natural life but for not less than five years, or both.

-2-

(b) As used in this section --

- (i) the term "classified information" means any information or material that has been designated and clearly marked or represented, pursuant to the provisions of a statute, Executive order, or regulation, as requiring protection against unauthorized disclosure for reasons of national security;
- (ii) the term "special access program" means a program created by the head of any agency, pursuant to a statute or Executive Order, to control access, distribution, and protection of particularly sensitive classified information;
- (iii) the term "disclose" or "discloses" means to communicate, provide, impart, transmit, transfer, convey, publish, or otherwise make available;
- (iv) the term "authorized access" means having authority, right, or permission to receive information or material within the scope of authorized government activities or pursuant to the provisions of a statute, international agreement, Executive Order, regulation, United States court order, or Congressional rule or resolution."



REP. STUMP DRAFT

1. Covers ALL CLASSIFIED INFORMATION
2. Covers INTENTIONAL DISCLOSURES BY OFFICERS AND EMPLOYEES  
(BUT NOT OTHERS WITH AUTHORIZED ACCESS)
3. Covers SUCH DISCLOSURES TO PERSONS WHO ARE NOT AUTHORIZED  
TO RECEIVE CLASSIFIED INFORMATION
4. Disclosures intent to authorize withholding information  
from Congress

DoJ Position (1983)

In 1983, DoJ provided comments to OMB which generally supported a CIA proposal similar to the Stump draft but which also covered DISCLOSURES BY PERSONS WITH AUTHORIZED ACCESS TO CLASSIFIED INFORMATION, in addition to disclosure by officers and employees.

# The Slump Bill

-7-

Director of the Federal Bureau of Investigation by paragraph (3) of this subsection shall be done on a case-by-case basis with respect to travel by a member of a foreign mission from any state which does not routinely permit members of United States missions to that state to travel without hindrance to areas in that state similar to those described in paragraph (2) of this subsection."

## TITLE IV

SEC. 401. This title may be cited as the "Federal Employee Unauthorized Disclosure of Classified Information Act".

SEC. 402. (a) Chapter 93 of title 18, United States Code is amended by adding at the end thereof the following new section:

"1924. Unauthorized Disclosure of Classified Information  
by Federal Personnel

"(a) Whoever, being an officer or employee of the United States, intentionally discloses classified information to an individual not authorized to receive classified information shall be fined \$15,000 or imprisoned for not more than three years, or both.

"(b) It shall be a defense to prosecution under this section that the defendant reasonably believed that he had lawful authority to disclose the classified information in the circumstances.

"(c) Nothing in this section shall be construed to authorize or permit the withholding of information from the Congress.

"(d) For purposes of this section --

-8-

"(1) 'authorized' means having authority, right, or permission pursuant to the provisions of a statute, Executive order, directive of the head of any department engaged in foreign relations, national defense, or foreign intelligence or counterintelligence activities, order of any court of the United States, or rule or resolution of the House of Representatives or the Senate;

"(2) 'classified information' has the meaning set forth in Section 1(a) of the Classified Information Procedures Act (18 U.S.C. App.);

"(3) 'discloses' has the meaning set forth in Section 606(3) of the National Security Act of 1947 (50 U.S.C. 426 (3)); and

"(4) 'officer or employee of the United States' means any member of the civil service or the uniformed services as defined in section 2101 of title 5, United States Code."

(b) The table of contents of Chapter 93 of title 18, United States Code is amended by adding at the end thereof the following:

"1924. Unauthorized Disclosure of Classified Information By Federal Personnel."

## TITLE V

SEC. 501. This title may be cited as the "Federal Polygraph and Prepublication Review Limitation Act".

SEC. 502. (a) Chapter 73 of title 5, United States Code is amended by adding at the end thereof the following new subchapter: